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Date: April 4, 2017  
Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

ALFRED PLACERES,

Case No. 15-10691 (SMB)

Debtor.

Chapter 7

-----X  
JOSE BORGES,

Plaintiff,

Adv. Proc. No. 15-01356-SMB

-against-

ALFRED PLACERES,

Defendant.

-----X

**NOTICE OF MOTION FOR AN ORDER (1) PERMITTING THE SUBSTITUTION  
OF DEFENDANT'S COUNSEL OR (2) PERMITTING THE WITHDRAWAL OF  
DEFENDANT'S COUNSEL**

**PLEASE TAKE NOTICE**, upon the annexed Motion and supporting documents, Alfred Placeres (the "Defendant") and Ortiz & Ortiz LLP, *pro se*, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge for the Southern District of New York, at the United States Bankruptcy Courthouse, One Bowling Green, New York, New York, 10004-1408, on April 4, 2017, at 10:00 a.m., for the entry of an order (1) Permitting the Substitution of Defendant's Counsel or (2) Permitting the Withdrawal of Defendant's Counsel, and for such other relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that any response to the motion must be filed no later than seven (7) days prior to the hearing date, and served upon the Defendant's Counsel and the Chambers of the Hon. Stuart M. Bernstein.

Dated: March 7, 2017  
Astoria, New York

S/Norma E. Ortiz  
Norma E. Ortiz  
ORTIZ & ORTIZ, L.L.P.  
32-72 Steinway Street, Ste. 401  
Astoria, New York 11103  
Defendant's Counsel

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

ALFRED PLACERES, Case No. 15-10691 (SMB)

Debtor. Chapter 7

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JOSE BORGES,

Plaintiff, Adv. Proc. No. 15-01356-SMB

-against-

ALFRED PLACERES,

Defendant.

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**MOTION FOR AN ORDER (1) PERMITTING THE SUBSTITUTION  
OF DEFENDANT'S COUNSEL OR (2) PERMITTING THE WITHDRAWAL OF  
DEFENDANT'S COUNSEL**

TO THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:

Ortiz & Ortiz, L.L.P. ("O & O"), *pro se*, and Alfred Placeres (the "Defendant"), by his attorneys Ortiz & Ortiz, L.L.P., respectfully represent as follows:

Background

1. O & O was retained by the Defendant to defend against the above-captioned adversary proceeding.
2. Because the Defendant did not have the ability to compensate O & O at its customary rates, O & O and the Defendant entered into a fee agreement dated November 11, 2015 (the "Agreement") wherein O & O agreed to represent the Defendant at a substantially reduced hourly rate through the discovery process and any possible mediation. The parties agreed that given O & O's reduced rates, the Defendant would obtain separate trial counsel if the case progressed to trial.

3. The Court has resolved the motions for summary judgment, and will be scheduling a trial of the remaining issues. O & O has honored the terms of its agreement, and the Defendant has obtained new counsel to serve as trial counsel. A copy of a stipulation of substitution executed by O & O, the Defendant, and Maria Malave (“Counsel”) is annexed as Exhibit A.

4. However, the Defendant has not honored the payment terms of the Agreement. O & O has not received any payment of legal fees from the Defendant since in or about September 2016. O & O has rendered over 180 hours of legal services, and has maintained contemporaneous time records documenting the services rendered; it has received payment for less than 25 of those hours.<sup>1</sup>

5. Since the Court has not yet scheduled a trial date, substitution of counsel at this stage should not cause any significant delay of the proceedings before the Court. In addition, proposed counsel served as the Defendant’s bankruptcy counsel, and has familiarity with the Defendant’s case.

Relief Requested

6. Local Bankr. Rule 2090-1(e) provides in relevant part that an attorney seeking to withdraw or be replaced as counsel must show cause for doing so. Unfortunately, the local rule does not define cause, and there is a dearth of bankruptcy case law addressing the factors considered when a defendant simply seeks to substitute counsel.

7. The Defendant asserts that since the Defendant contemplated retaining substitute counsel, and substitution should not delay the proceedings, it is respectfully submitted that cause

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<sup>1</sup> Copies of the time records and retainer agreement are available for the Court’s inspection.

exists to permit the Defendant to proceed with counsel of choice.

8. Alternatively, O & O requests that the Court permit the firm to withdraw as counsel. New York Rule of Professional Conduct, Rule 1.16(c)(5) permits a lawyer to withdraw from representation based on a client's deliberate disregard for an agreement regarding legal expenses or fees. 22 N.Y.C.C.R. §1.16(c)(5) ("[A] lawyer may withdraw from representing a client when . . . the client deliberately disregards an agreement or obligation to the lawyers as to expenses or fees[.]"). Of course, when non-payment is the sole ground for withdrawal, it is within the Court's discretion to grant or deny such a request. However, it is respectfully submitted that given the amount of work performed for the Defendant without compensation, the Court should find that it would be inequitable to require O & O to continue rendering services to the Debtor under these circumstances.

WHEREFORE, the Defendant and O & O request that the Court grant the relief requested herein, and grant such other and further relief as it deems just.

Dated: Astoria, New York  
March 17, 2017

*S/Norma E. Ortiz*  
Norma E. Ortiz, Esq.  
Ortiz & Ortiz, L.L.P.  
32-72 Steinway Street, Ste. 402  
Astoria, New York 11103  
Tel. (718) 522-1117

## **Exhibit A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

ALFRED PLACERES,

Case No. 15-10691 (SMB)

Debtor.

Chapter 7

JOSE BORGES,

Plaintiff,

Adv. Pro. No. 15-01356 (SMB)

-against-

ALFRED PLACERES,

Defendant.

**STIPULATION AUTHORIZING SUBSTITUTION OF  
DEFENDANT'S COUNSEL**

The undersigned hereby consent and agree that Ortiz & Ortiz, L.L.P., with offices located at 32-72 Steinway Street, Astoria, New York 11103, present counsel of record for the above-captioned defendant, shall be substituted as counsel for the debtor by Maria Malave, Esq., with offices located at 364 W. 121<sup>st</sup> Street, Ste. 2A, New York, NY 10027.

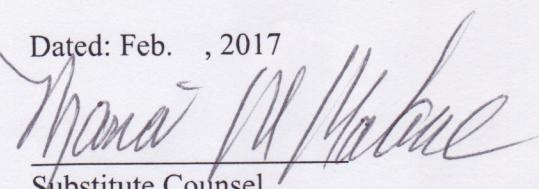
We further agree to the use of signatures obtained by facsimile transmission, or digitally created, or scanned as an electronic duplicate in lieu of original signatures.

Dated: Feb. 16, 2017

s/Norma E. Ortiz  
Retiring Counsel  
Norma E. Ortiz  
Ortiz & Ortiz, L.L.P.  
32-72 Steinway Street, Ste. 402  
Astoria, New York 11103

Alfred Placeres

Dated: Feb. , 2017

  
Substitute Counsel  
Maria M. Malave  
124 West 227 Street  
Bronx, NY 10463

## **Proposed Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re:

ALFRED PLACERES,

Case No. 15-10691 (SMB)

Debtor.

Chapter 7

-----x  
JOSE BORGES,

Plaintiff,

Adv. Proc. No. 15-01356-SMB

-against-

ALFRED PLACERES,

Defendant.

-----X

**ORDER PERMITTING THE SUBSTITUTION  
OF DEFENDANT'S COUNSEL**

Upon the Motion for an Order (1) Permitting the Substitution of Defendant's Counsel or (2) Permitting the Withdrawal of Defendant's Counsel dated March 17, 2017 (the "Motion"); the Court having conducted a hearing on the Motion on April 4, 2016; no written opposition to the Motion having been filed; due notice of the Motion having been given, and the Defendant having demonstrated cause for the relief requested in the Motion, it is hereby

ORDERED, that the Motion is granted, and Maria M. Malave, Esq., is permitted to substitute Ortiz & Ortiz, L.L.P., as Defendant's Counsel in the above-captioned proceeding.

Dated: New York, New York  
2017

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STUART M. BERNSTEIN  
U.S. BANKRUPTCY JUDGE